

HONORABLE JAMES L. ROBERT

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

v.

MOTOROLA, INC., et al.,

Defendants.

No. C10-1823-JLR

MICROSOFT'S 6/15/12 MOTION TO
FILE DOCUMENTS UNDER SEAL

**NOTED FOR:
Friday, June 29, 2012**

MOTOROLA MOBILITY, INC., et al.,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

I. RELIEF REQUESTED

Pursuant to Local Civil Rule 5(g) and paragraphs 2(a) and 8 of the protective order entered in this case, Microsoft is required to file this motion for leave to file under seal Exhibit 1 to Chris Wion's June 15, 2012 letter to the Court requesting leave to supplement the record on Microsoft's Motion for Partial Summary Judgment Dismissing Motorola's Claim for Injunctive Relief (ECF No. 141).

The document at issue discloses information that has been designated by third party MPEG LA, LLC as confidential business information under the terms of the operative

MICROSOFT'S 6/15/12 MOTION TO FILE
DOCUMENTS UNDER SEAL - 1

No. C10-1823

LAW OFFICES
DANIELSON HARRIGAN LEYH & TOLLEFSON LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL., (206) 623-1700 FAX, (206) 623-8717

1 protective order issued in this case. For this reason, and as more fully described below,
 2 Microsoft is required to file this motion.

3 **II. FACTS & AUTHORITY**

4 **A. The Operative Protective Order Requires Microsoft to File Third Party** 5 **Confidential Information under Seal.**

6 Pursuant to the Protective Order issued by the Court on July 21, 2011, Microsoft is
 7 required to file under seal materials designated by third parties as Confidential Business
 8 Information¹, with such documents to remain under seal upon Court approval. Paragraphs 2(a)
 9 and 8 of the Protective Order govern the filing of documents under seal. Paragraph 2(a)
 10 provides:

11 Any information submitted in pre-trial discovery or in a pleading, motion, or
 12 response to a motion in this action, either voluntarily or pursuant to order, and
 13 which is asserted by a supplier to contain or constitute Confidential Business
 14 Information shall be so designated by such supplier in writing...and shall be
 15 segregated from other information being submitted. Documents shall be clearly
 16 and prominently marked on their face with the legend: “[SUPPLIER’S NAME]
 17 CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO
 PROTECTIVE ORDER” or a comparable notice. During the pre-trial phase of
 this action, such information, whether submitted in writing or in oral testimony,
 shall be disclosed only *in camera* before the Court and shall be filed only under
 seal, pursuant to Rule 5(g) of the Local Civil Rules of the United States District
 Court for the Western District of Washington.

18 Paragraph 8 likewise provides that:

19 Any Confidential Business Information submitted to the Court in connection
 20 with a motion or other proceeding within the purview of this action shall be
 submitted under seal pursuant to paragraph 2 above.

21 *Id.*, at ¶ 8.

22
 23
 24 ¹ “Confidential Business Information” is defined in the parties’ Protective Order as “information which has not
 25 been made public and which concerns or relates to the trade secrets, processes, operations, style of work, or
 apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories,
 amounts or source of any income, profits, losses, or expenditures.” Protective Order Regarding the Disclosure
 and Use of Discovery Materials (ECF No. 72), ¶1.

B. Exhibit 1 to Chris Wion's June 15, 2012 Letter Discloses Information Designated as Confidential Business Information.

Exhibit 1 to Chris Wion's June 15, 2012 letter to the Court consists of a letter sent by counsel for Microsoft to counsel for Google, Inc. on June 15, 2012 (the "Cramer Letter"). The Cramer Letter attaches as Exhibit A a document titled "AVC Patent Portfolio License." The AVC Patent Portfolio License is a license agreement between third-party MPEG LA and Motorola's parent company, Google, which MPEG LA has designated as containing confidential information under the terms of the Protective Order entered in this action. Because the Cramer Letter describes and refers to the terms of Google's AVC Patent Portfolio License, Microsoft is required to file both the Cramer Letter and Exhibit A thereto under seal.

III. CONCLUSION

Microsoft has filed the above-referenced document under seal based on MPEG LA's determination that it qualifies for protection under the terms of the Protective Order and the applicable Court rules. A [Proposed] Order Granting Microsoft's 6/15/2012 Motion to File Documents Under Seal has been submitted herewith.

DATED this 15th day of June, 2012.

DANIELSON HARRIGAN LEYH & TOLLEFSON LLP

By s/ Arthur W. Harrigan
 Arthur W. Harrigan, Jr., WSBA #1751
 Christopher Wion, WSBA #33207
 Shane P. Cramer, WSBA #35099

s/ T. Andrew Culbert
 T. Andrew Culbert
 David T. Pritikin
 Richard A. Cederoth
 Constantine L. Trela, Jr.
 William H. Baumgartner, Jr.
 Ellen S. Robbins
 Douglas I. Lewis
 David C. Giardina
 John W. McBride
 David Greenfield

1 SIDLEY AUSTIN LLP
2 One South Dearborn
3 Chicago, IL 60603
4 Phone: 312-853-7000
5 Fax: 312-853-7036

6
7 Carter G. Phillips
8 Brian R. Nester

9
10 SIDLEY AUSTIN LLP
11 1501 K Street NW
12 Washington, DC 20005
13 Telephone: 202-736-8000
14 Fax: 202-736-8711

15
16 Counsel for Microsoft Corp.
17
18
19
20
21
22
23
24
25

CERTIFICATE OF SERVICE

I, Susie Clifford, swear under penalty of perjury under the laws of the State of Washington to the following:

1. I am over the age of 21 and not a party to this action.
2. On the 15th day of June, 2012, I caused the preceding document to be served on counsel of record in the following manner:

Attorneys for Motorola Solutions, Inc., and Motorola Mobility, Inc.:

Ralph Palumbo, WSBA #04751
Philip S. McCune, WSBA #21081
Lynn M. Engel, WSBA #21934
Summit Law Group
315 Fifth Ave. South, Suite 1000
Seattle, WA 98104-2682
Telephone: 206-676-7000
Email: Summit1823@summitlaw.com

_____ Messenger
_____ US Mail
_____ Facsimile
 X ECF/Email

Steven Pepe (*pro hac vice*)
Jesse J. Jenner (*pro hac vice*)
Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036-8704
Telephone: (212) 596-9046
Email: steven.pepe@ropesgray.com
Email: jesse.jenner@ropesgray.com

_____ Messenger
_____ US Mail
_____ Facsimile
 X ECF/Email

Norman H. Beamer (*pro hac vice*)
Ropes & Gray LLP
1900 University Avenue, 6th Floor
East Palo Alto, CA 94303-2284
Telephone: (650) 617-4030
Email: norman.beamer@ropesgray.com

_____ Messenger
_____ US Mail
_____ Facsimile
 X ECF/Email

1 Paul M. Schoenhard (*pro hac vice*)

2 Ropes & Gray LLP

3 One Metro Center

4 700 12th Street NW, Suite 900

5 Washington, DC 20005-3948

6 Telephone: (202) 508-4693

7 Email: Paul.schoenhard@ropesgray.com

____ Messenger

____ US Mail

____ Facsimile

X ECF/Email

8 DATED this 15th day of June, 2012.

9 _____
10 s/Susie Clifford

11 SUSIE CLIFFORD